

Micro Machinery Hire Limited – Terms of Hire

1. Definitions

1.1 In this agreement unless the context otherwise requires:

- (a) **Default Rate** means 6% plus the base lending rate charged by the Owner's bankers on the date of the relevant default.
- (b) **Equipment** means the machinery, vehicles, trailers, tractors or other equipment described on the front page of this agreement and any other equipment hired to the Customer by the Owner and includes all accessories and other goods attached to or used in connection with such equipment.
- (c) **Fee** has the meaning given to it in clause 4.4.
- (d) **Insurance Charge** has the meaning given to it in clause 7.1(a).
- (e) **Limited Damage Waiver** has the meaning given to it in clause 7.1(b).
- (f) **Term** means the term of the hire of the Equipment commencing at the time and on the date, and ending at the time and on the date, specified on the front page of this agreement, unless terminated earlier in accordance with the terms of this agreement or extended on written agreement between parties. If no date is specified then the term will be deemed to commence on the date that the Customer signs this agreement.

2. Term

- 2.1 The Owner hires to the Customer, and the Customer takes on hire from the Owner, the Equipment for the Fee and otherwise on the terms contained herein. The hire of the Equipment is fixed for the Term, unless earlier terminated in accordance with this agreement.
- 2.2 The Customer will make the Equipment available to the Customer at the commencement of the Term.
- 2.3 Unless otherwise agreed with the Owner, the Customer will be responsible for collecting and arranging delivery of the Equipment at the Customer's cost from the Owner's premises at the or other site specified by the Owner at commencement of the Term.

3. Condition

- 3.2 The Customer agrees the Customer has inspected the Equipment prior to execution of this agreement and acknowledges that the Equipment is in proper working order and condition. The Customer relies on its own inspection of the Equipment and its own skill and judgment, and not that of the Owner, as to the quality and suitability of the Equipment for the Customer's intended purpose.
- 3.3 All statutory warranties relating to the Equipment which may be implied by law are excluded except to the extent that their exclusion is prohibited by law.

4. Hire fee

- 4.1 The Owner may require the Customer to pay a deposit, or full payment of the Fee, as determined by the Owner prior to taking possession of the Equipment.
- 4.2 The Fee is to be paid to Owner in the manner that the Owner may specify from time to time. Where an invoice is issued by the Owner for any amounts payable under this agreement, the Customer will pay the invoice by the 20th day of the following month.
- 4.3 The Fee will be charged for the whole Term.
- 4.4 The Fee payable by the Customer ("Fee") is the greater of:
 - (a) The Fee specified on the front page of this agreement (if any); or
 - (b) The amount calculated by multiplying the applicable rate specified on the front page of this agreement or such other rate notified by the Owner from time to time by the number of hours, days, weeks or months (as applicable) that the Equipment is in the possession of the Customer or persons under the control of the Customer (including beyond the end of the Term), as determined by the Owner.
- 4.5 Where the Equipment has been damaged or destroyed, the Customer will be liable to pay the Fee for the greater of:
 - (a) the Term;
 - (b) the period commencing on the commencement of the Term and ending on the date upon which repair or replacement of the damaged or destroyed Equipment has been completed and the Equipment is returned to its condition at commencement of the Term (the Equipment being deemed to be in the Customer's possession until the Equipment is repaired or replaced, except where the Owner is satisfied that the damage to the Equipment has occurred not as a result of any act or omission of the Customer).
- 4.6 In addition to the Fee, the Customer will also pay any levies and taxes charged by the Owner to the Customer immediately upon receipt of an invoice for the same by the Customer, and will pay in addition to the Fee Road User Charges (RUC) and a price per kilometre for maintenance as specified on the front page of this agreement or as otherwise determined by the Owner from time to time.
- 4.7 Before commencement of the Term or at any other time requested by the Owner, the Customer will provide to the Owner a bond in cash in the amount specified as the Bond on the front page of this agreement ("the Bond").
- 4.8 On return of the Equipment by the Customer, the Owner may use the whole or any part of the Bond against the costs incurred by the Owner as a result of any damage or any other amounts outstanding by the Customer under this agreement. The Owner will pay the balance (if any) to the Customer.
- 4.9 The use of the Bond by the Owner is without prejudice to any other rights or remedies available to the Owner, including but without limitation under any indemnity given by the Customer to the Owner.
- 4.10 Unless otherwise stated in this agreement, the Equipment is to be returned to the Owner before the time specified on the front page of this agreement on the last day of the Term in the manner described in clause 14. Where the Equipment is not returned by the time specified, the Owner shall have the right to charge the Customer at the half day rate or full day rate or such other rate as determined by the Owner from time to time until the Equipment is returned in accordance with this agreement.

5. **Ownership**

5.1 The legal and beneficial ownership in the Equipment remains with the Owner at all times notwithstanding the possession and use of the Equipment by the Customer.

6. **Risk and insurance**

6.1 From commencement of the Term until the end of the Term, or until the Equipment is returned to the Owner (whichever is later), the Equipment is at the Customer's sole risk. Except where the Customer's liability is limited pursuant to the provisions of clause 7, the Customer is responsible for all loss or damage whatsoever to the Equipment.

6.2 If it has not been indicated on the front page of this agreement that the Limited Damage Waiver will apply, or if for any other reason the Limited Damage Waiver does not apply, then:

- (a) The Customer is responsible for all loss or damage whatsoever and howsoever caused to the equipment;
- (b) ;The Customer must at the Customer's cost insure the Equipment for its full market value effective for the Term with a suitable insurance company, in the Owner's name, and against all risks including but not limited to fire, theft, accident and damage to the Equipment or to other property;
- (c) In addition to any other requirements specified in writing by the Owner from time to time, the Customer must:
 - (i) Ensure that the insurance policy is a full replacement insurance policy that provides for a maximum excess of \$5,000 (which is payable by the Customer in addition to all premiums) including without limitation coverage for hire charges, transit costs and public liability. Without limiting the Owner's right to claim loss of revenue from the Customer, the insurance policy must also include, at a minimum, coverage for the Owner's loss of revenue while the Equipment is being repaired or replaced;
 - (ii) Make a claim at any time the Equipment is destroyed or damaged or at any other time directed by the Owner, and if required by the Owner will agree to the Owner making a claim or continuing any claim already made by the Customer, and transferring to the Owner all rights under its policy.
 - (iii) If any money is paid to the Customer by the insurance company pursuant to any claim or otherwise, the Customer shall be deemed to hold that money in trust for the Owner and shall immediately pay such money to the Owner.
 - (iv) Provide to the Owner immediately upon request evidence of insurances taken out which must be acceptable to the Owner in all respects. The Owner reserves the right to not allow the Customer possession of the Equipment until evidence of insurance on terms acceptable to the Owner is provided by the Customer to the Owner.

6.3 If for any reason the Customer is in breach of this clause 6 and or does not hold the required insurance, or the Customer's insurer does not pay out on the relevant policy, the Customer warrants that it will personally be responsible for all obligations set out in this clause and that it will pay to the Owner the full market replacement value of the Equipment (as notified by the Owner) immediately upon written demand being made by the Owner.

7. **Insurance charge**

7.1 Subject to clauses 7.2, 7.3 and 7.4, if it has been indicated in the front page of this agreement that the Limited Damage Waiver will apply for the Equipment, then:

- (a) the Insurance Charge specified on the front page of this agreement ("Insurance Charge") will be added to the Fee and paid by the Customer as invoiced by the Owner; and
- (b) where the Equipment suffers loss or damage which is covered by the Owner's insurance policy, the Customer's liability to the Owner in relation to such loss or damage is limited to the excess payable under the Owner's insurance policy ("Limited Damage Waiver").

7.2 The Limited Damage Waiver applies only to loss or damage to the Equipment and not to any consequential losses, and does not limit, prejudice or affect any other obligation the Customer has under this agreement.

7.3 The Customer acknowledges that the Limited Damage Waiver will not apply where the Customer is in breach of any term of this agreement, or where the Owner's insurance policy does not cover the damage or loss for any reason including but not limited to loss or damage resulting from any negligent or intentional act or omission by the Customer, or where any proceeds received from the Owner's insurance is in the opinion of the Owner insufficient to cover the repair or replacement of the Equipment.

7.4 The Customer must notify the Owner of its intended use and location of the Equipment prior to commencement of the Term to determine whether this will affect the Owner's insurance policy.

7.5 If the Equipment is destroyed or damaged and any insurance money paid to the Owner is, in the opinion of the Owner, adequate to replace or repair the Equipment, the Owner will apply the insurance money for this purpose. Without affecting any other obligations of the Customer under this agreement, the Customer will pay to the Owner any shortfall between the insurance proceeds received and the cost to the Owner of replacing the Equipment with like equipment or repairing the Equipment.

7.6 If in the opinion of the Owner the insurance money received is not adequate to repair or replace the Equipment then the Owner may choose to terminate the agreement. Termination will not affect any rights, remedies, obligations or liabilities of either party for any act, omission, or other matter whatsoever arising prior to the termination of the agreement.

8. **Customer's obligations**

8.1 The Customer must operate and care for the Equipment in a responsible and prudent manner and in particular, warrants undertakes to:

- (a) comply with all terms of this agreement;
- (b) comply with any manufacturer's recommendations for the care and operation of the Equipment and observe any maintenance programme specified by the Owner;

- (c) at its own expense supply and top up as necessary all fuel, oil, and other consumables for the operation of the Equipment and will check fuel and oil levels and carry out usual operating checks prior to use of the Equipment each day;
 - (d) keep the Equipment in a safe and secure place when not in use;
 - (e) permit the Equipment to be used only by properly licensed and qualified persons, who must be 21 years of age or over;
 - (f) comply with all legal requirements relating to the use and operation of the Equipment;
 - (g) pay all fees, taxes and costs associated with the possession, use and operation of the Equipment unless this agreement provides otherwise;
 - (h) be responsible for all Road User Charges and any offences committed which involve the Equipment, including but not limited to traffic infringements, parking fines, fines for overloading, and operating without the correct licence;
 - (i) ensure that the Certificate of Fitness for the Equipment and Road User Charges are on visible display at all times;
 - (j) not do or allow any act or omission which might prejudice any warranties given for the Equipment or the recovery of any insurance monies payable in relation to the Equipment or its use;
 - (k) not sell, pledge, charge, mortgage, lease out, sublet or part with the possession or control of the Equipment or allow any lien or other encumbrance over it, or attempt to or authorise those things without the Owner's prior written consent;
 - (l) immediately notify the Owner in writing of any loss or damage to the Equipment, including but not limited to mechanical breakdown;
 - (m) promptly delivery the Equipment to the Owner on demand if the Owner requires it for testing, inspection or repossession purposes or if the Customer is in breach of this agreement.
- 8.2 The Customer further warrants:
- (a) that all particulars supplied by the Customer in the Customer's application for lease of the Equipment are (or will be) correct; and
 - (b) that the Customer is 21 years of age or over and has full power and authority to enter into this agreement which is binding on and enforceable against the Customer;
 - (c) that it is and will be responsible for the employees and agents of the Customer and any other person who may be at any time under the control or direction of the Customer.
9. **Default interest**
- 9.1 If the Customer fails to make any payment due to the Owner by the date such payment falls due under this agreement then the Customer will pay interest on the amount in arrears at the Default Rate calculated from the due date to the date of actual payment.
- 9.2 This clause is without prejudice to any other rights or remedies of the Owner.
10. **Default by customer**
- 10.1 This agreement continues until ended:
- (a) by expiry of the Term or any renewed term (if applicable); or
 - (b) by agreement between the parties; or
 - (c) in accordance with clause 7.6, 10.2 or 12.3.
- 10.2 The Owner can end this agreement by notice in writing to the Customer (the Termination Notice) if the Customer:
- (a) Is in breach of the terms of this agreement or does not fulfil any of its obligations under this agreement and either:
 - (i) the default is material and cannot be remedied; or
 - (ii) the default can be remedied but has not been 7 days after the Customer receives written notice of the default;
 - (b) commits an act of bankruptcy or makes any assignment or composition with its creditors;
 - (c) becomes liable to be wound up;
 - (d) cannot pay its debts when they fall due, or is deemed not to be able to pay them in accordance with section 287 of the Companies Act 1993; or
 - (e) has a liquidator appointed or its board or shareholders propose or pass a resolution to appoint a liquidator;
 - (f) has a receiver, manager or statutory manager appointed;
 - (g) the Customer abandons the Equipment or does or causes to be done or permits or suffers any act or thing which prejudices or endangers the safety or condition of the Equipment or the Owner's rights in the Equipment or any of them under this agreement.
 - (h) the Customer, being a natural person, dies.
- 10.3 Any termination of this agreement will be without prejudice to the rights of either party arising prior to termination.
- 10.4 Nothing in this clause affects the operation of any clauses in this agreement which are expressed or implied to have effect after its termination.
11. **Consequences of termination**
- 11.1 If this agreement is terminated in accordance with this agreement:
- (a) Without limiting any other rights the Owner may have at law, the Owner may retake possession of the Equipment and the Customer irrevocably authorises the Owner to enter onto any property by any means and take whatever steps are reasonably necessary for that purpose.
 - (b) The Customer indemnifies the Owner against all claims, losses and costs incurred by the Owner as the result of its exercising its rights under this clause.

12. **Protection of Owner's rights**
- 12.1 The Customer irrevocably appoints the Owner and every director, manager, branch manager, and secretary of the Owner severally as an agent of the Customer.
- 12.2 Any such agent may do anything in the name of the Customer which is necessary or desirable in the Owner's opinion to:
- (a) ensure performance of the Customer's obligations under this agreement; or
- (b) protect the Equipment for the value of the Owner's interest in it.
- 12.3 The Owner reserves the right to enter onto the premises on which the Equipment is kept to inspect the Equipment at any time and to terminate this agreement if in the opinion of the Owner the Equipment is not being adequately used or maintained.
13. **Indemnity and liability**
- 13.1 The Customer indemnifies the Owner and its directors, employees, contractors and agents against any liability for any direct, indirect or consequential injury, loss, damage or cost arising directly or indirectly out of the Customer's use of the Equipment including any act or default or omission of, or any representations made by the Customer or by any servant, agent, employee or contractor, of the Customer.
- 13.2 To the extent permitted by law, all warranties, conditions or obligations imposed on the Owner at law, in equity, or otherwise are expressly excluded.
- 13.3 When the Customer acquires goods and/or services from the Owner, for the purposes of a business:
- (a) the parties acknowledge and agree that:
- (i) the Customer is acquiring the goods or services covered by this agreement for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
- (ii) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9, 12A, and 13; and
- (b) the Customer agrees that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from this agreement to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 13.4 To the extent permitted by law, the Owner or its directors, employees, contractors and agents shall not be liable for any loss, damage or liability of any kind whatsoever (including indirect or consequential losses or loss of profit, business, revenue, or goodwill) whether suffered or incurred by the Customer or other party and whether in contract, tort (including negligence), or otherwise, and whether such loss or damage arises directly or indirectly from the Equipment or any other Equipment or services provided by the Owner to the Customer or otherwise.
- 13.5 For the sake of clarity, the Customer further acknowledges that it is also responsible for and the Owner will not be liable for any losses, costs or damages suffered by the Customer, whether direct or indirect as a result of any delays while the Equipment is being serviced, maintained or repaired.
- 13.6 If, for any reason a court finds that the Owner is liable to the Customer then, to the maximum extent permitted by law, such liability will be limited to the Fee.
14. **Expiration of Term**
- 14.1 This agreement will terminate at the end of the Term and the Customer shall prior to expiry of the Term deliver the Equipment to the Owner in good working order, repair, condition, and appearance as it was when delivered to the Customer and with a full tank of fuel if applicable.
- 14.2 Notwithstanding anything to the contrary in this agreement the Customer will be liable for and will indemnify the Owner against the cost of reconditioning any Equipment rendered by the Customer unfit for further service.
15. **Costs**
- 15.1 The Customer must pay the Owner's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Owner's rights, remedies and powers under this agreement.
16. **No assignment**
- 16.1 The Customer may not assign, sub-let or otherwise deal with its rights under this agreement without the prior written consent of the Owner. A change in the effective management or control of the Customer will be deemed an assignment for the purposes of this clause.
- 16.2 The Owner and its successors or assigns may in its absolute discretion without the consent of or notice to the Customer, assign all or any of its rights or obligations under this agreement to any other entity or person.
17. **Personal Property Securities Act 1999 (PPSA)**
- 17.1 All terms in this clause have the meaning given in the PPSA and section references are to sections of the PPSA.
- 17.2 The Customer acknowledges that this agreement creates a security interest in the Equipment.
- 17.3 On the request of the Owner, the Customer will promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this agreement in favour of the Owner constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment.
- 17.4 All costs of and incidental to the registration, amendment or discharge of the Security Interest or financing statement must be paid by the Customer.
- 17.5 The Customer will promptly notify the Owner of any changes to the Customer's details on the front page of this agreement.

- 17.6 The Customer waives any rights it may have under sections 114(1)(a), 116,120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA and further waives its right to receive a copy of the Verification Statement or a Financing Change Statement relating to any Security Interest created by this agreement.
- 17.7 Until all moneys owed by the Customer under this agreement have been paid and all the Customer's obligations satisfied in full, the Customer irrevocably grants the Owner and its agent the right to enter into the Customer's property or any other property where the Equipment is stored and take possession of the Equipment.
18. **Privacy Act 2020**
- 18.1 Where the Customer is a natural person, for the purposes of the Privacy Act 2020, the Customer authorises the Owner:
- (a) to collect, retain and use information about the Customer from any person for the purpose of assessing the Customer's creditworthiness;
 - (b) to disclose information about the Customer:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Customer's obligations under this agreement;
 - (ii) to such persons as may be necessary or desirable to enable the Owner to exercise any power or enforce or attempt to enforce any of the Owner's rights, remedies, and powers under this agreement.
19. **Notices**
- 19.1 Notices served under this agreement shall be in writing signed by the party giving the notice or by any officer or solicitor of that party. Any notice or document shall be deemed to be duly given or made:
- (a) if delivered by hand, when so delivered;
 - (b) if sent by post, on the third business day following posting;
 - (c) in the case of a communication by email or facsimile when transmitted with no indication of incomplete transmission.
- 19.2 Notices, communication, documents or demands shall be given by the Customer at the addresses set out on the front page of this agreement or as otherwise notified in writing to the other party.
20. **General**
- 20.1 If any provision of this agreement is held to be unenforceable, illegal, or invalid by any court or tribunal:
- (a) the rest of this agreement will remain in full force and effect;
 - (b) the parties will co-operate to ensure that the spirit and intention of this agreement is carried out as far as is reasonably possible; and
 - (c) the parties will, if necessary, amend this agreement accordingly.
- 20.2 No failure or delay by a party to exercise (in whole or in part) any right, power or remedy under this agreement will operate as a waiver of that right, power or remedy.
- 20.3 The Owner may set-off any money or any property claimed by the Customer against the Owner against any debt or liability of the Customer to the Owner.
- 20.4 The rights, powers, and remedies in this agreement are in addition to, and do not exclude or limit, any rights, powers, or remedies provided at law or in equity unless stated otherwise in this agreement.
- 20.5 The Owner will not be in breach of this agreement and will not be liable for any delay attributable in whole or in part to action by any government or governmental agency or other external agency or event, including natural disaster or emergency, pandemic, epidemic, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other event beyond the Owner's control.
- 20.6 The rule of construction known as the contra proferentem rule does not apply to this agreement.
- 20.7 This agreement is governed by and construed according to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this agreement.
21. **Guarantee**
- 21.1 In consideration of the Customer entering into this agreement at the Guarantors' request, the Guarantors (and if more than one, then the Guarantors jointly and severally) unconditionally and irrevocably:
- (a) Guarantee to the Owner payment of the total amount owing by the Customer under this agreement and the performance by the Customer of all of the Customer's obligations in this agreement; and
 - (b) Indemnify the Owner against any loss or damage the Owner might suffer as a result of the Customer's breach of this agreement or should this agreement be lawfully disclaimed;
- 21.2 The Guarantors covenant with the Owner that:
- (a) No release delay or other indulgence given to the Customer whereby the Guarantors would have been released had the Guarantors been merely a surety shall release prejudice or affect the liability of the Guarantors as a guarantor or as an indemnifier;
 - (b) the Guarantors may be treated as principal debtors and the Owner shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantors;
 - (c) This guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Fee;
 - (d) An assignment of this agreement and any variation to the Fee or any other amount payable under this agreement in accordance with this agreement shall not release the Guarantors from liability;
 - (e) Should there be more than one Guarantor their liability under this guarantee shall be joint and several.
 - (f) This guarantee shall extend to any retention of the Equipment by the Customer after termination or expiry of this agreement.
 - (g) This guarantee is a continuing guarantee and is irrevocable and remains in full force and effect until all the Customer's obligations to the Owner under this agreement have been satisfied.